

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CALLAWAY GOLF COMPANY,

Plaintiff,

v.

ACUSHNET COMPANY,

Defendant.

C. A. No. 06-91 (SLR)

**CALLAWAY GOLF COMPANY'S MOTION FOR SUMMARY JUDGMENT OF
NO ANTICIPATION**

Pursuant to FRCP 56, Plaintiff Callaway Golf Company hereby submits this Motion for Summary Judgment of No Anticipation against Acushnet Company. For the reasons set forth in Callaway Golf Company's Brief in Support of its Motion for Summary Judgment of No Anticipation and all supporting memoranda, declarations and exhibits, Callaway Golf hereby moves for summary judgment that:

- (1) the Nesbitt '193 patent does not contain or incorporate by reference any discussion of polyurethane, and therefore the Nesbitt '193 patent does not anticipate any of the asserted claims that recite polyurethane for the outer cover layer (claims 1, 2, 4 and 5 of the '293 patent; claims 4 and 5 of the '130 patent; claims 1-11 of the '156 patent; and claims 1 and 3 of the '873 patent);
- (2) the Nesbitt '193 patent also does not disclose (expressly or inherently) an outer cover layer that has a Shore D value of 64 or less, and therefore it does not anticipate any of the asserted claims that contain that limitation (claims 1, 2, 4 and 5 of the '293 patent; claims 1, 2, 4 and 5 of the '130 patent, claims 1-3, 5 and 9 of the '156 patent; and claims 1 and 3 of the '873 patent);
- (3) like the Nesbitt '193 patent, the Proudfoot '187 patent does not disclose (expressly or inherently) an outer cover layer that has a Shore D value of 64 or less, and therefore it does not anticipate any of the asserted claims that contain that limitation (claims 1, 2, 4 and 5 of the '293 patent; claims 1, 2, 4 and 5 of the '130 patent, claims 1-3, 5 and 9 of the '156 patent; and claims 1 and 3 of the '873 patent); and
- (4) Acushnet cannot show that the Wilson Ultra Tour Balata golf ball has an inner cover layer that comprises a blend of two or more low-acid ionomers,

and therefore it does not anticipate any of the asserted claims that contain that limitation (claims 1-2 of the '293 patent; claims 1-2 and 4 of the '130 patent; claims 1-7 of the '156 patent; and claim 1 of the '873 patent).

Dated: August 7, 2007

FISH & RICHARDSON P.C.

By: /s/ Thomas L. Halkowski

Thomas L. Halkowski (#4099)
919 N. Market Street, Suite 1100
P.O. Box 1114
Wilmington, DE 19899-1114
Tel: (302) 652-5070
Fax: (302) 652-0607

Frank E. Scherkenbach
225 Franklin Street
Boston, MA 02110-2804
Tel: (617) 542-5070
Fax: (617) 542-8906

Roger A. Denning
12390 El Camino Real
San Diego, CA 92130
Tel: (858) 678-5070
Fax: (858) 678-5099

Attorneys for Plaintiff
CALLAWAY GOLF COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2007, the attached document was electronically filed with the Clerk of Court using CM/ECF which will send electronic notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I hereby certify that on August 7, 2007, I have Electronically Mailed the document to the following person(s):

Richard L. Horwitz
David E. Moore
Potter Anderson & Corroon LLP
Hercules Plaza
1313 North Market Street, 6th Floor
P.O. Box 951
Wilmington, DE 19899
rhorwitz@potteranderson.com
dmoore@potteranderson.com

Attorneys for Defendant
ACUSHNET COMPANY

Alan M. Grimaldi, Esq.
Joseph P. Lavelle
Brian Rosenthal
Clint Brannon
Kenneth Donnolly
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
grimaldia@howrey.com
lavellej@howrey.com
rosenthalB@howrey.com
brannonC@howrey.com
donnellyk@howrey.com

Attorneys for Defendant
ACUSHNET COMPANY

/s/ Thomas L. Halkowski

Thomas L. Halkowski